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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,054	07/06/2000	Tom Gray	481340010023	5057

7590 10/11/2005

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EXAMINER

KARMIS, STEFANOS

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/611,054	Applicant(s) GRAY ET AL	
	Examiner Stefano Karmis	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The following communication is in response to Applicant's appeal brief filed 19 May 2005.

Status of Claims

2. Claim 1, 14, 19 and 32 are original. Claims 2-13, 15-18, 20-31 and 33-36 are previously presented. Therefore claims 1-36 are currently pending.

Response to Amendment

3. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

In view of the appeal brief filed on 19 May 2005, PROSECUTION IS HEREBY REOPENED. The rejections cited are as stated below:

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

Art Unit: 3624

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Response to Arguments

4. Applicant's arguments filed 19 May 2205 are now moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 3624

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delp et al. (hereinafter Delp) U.S. Patent 5,996,013 in view of Johnson et al. (hereinafter Johnson) U.S. Patent 6,005,925.

Regarding independent claims 1 and 19, Delp teaches a method and system for service allocation among a plurality of entities requiring service allocation in a communications or computing environment in which a supply of services is initialized for one or more holding entities and endowing one or more entities with an adjustably fixed amount of utility and a requirement for an amount of said supply of services, wherein said fixed amount of utility is a measure representative of the possibility of failure due to lack of resources (column 4, lines 13-49); negotiating said supply of services of said holding entities, with each receiving a selected amount of its said fixed amount of utility and redistributing said supply of said holding entities among said entities based on said negotiating (column 3, lines 49-65 and column 4, lines 13-49). Delp fails to teach that the entity is a bidding entity for resources. Johnson teaches bidding for telecommunications traffic over routed segments (column 6, lines 17-65). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the charging for use teachings of Delp and include a bidding entity because it is an efficient manner to price a resource on a supply/demand basis for the shared resources assigned in Delp.

Claims 2 and 20, the supply of services are comprised of a plurality of resources (column 5, lines 1-10).

Claims 3 and 21, the resources are available at multiple service levels (column 4, lines 13-49).

Claims 4 and 22, initializing, endowing, negotiating and redistribution operate dynamically in response to a change in supply of services, fixed amount of utility or requirement for supply of services (column 4, lines 13-49).

Claims 5 and 23, the redistribution of the supply represents a guarantee of service (column 4, lines 13-49).

Claims 6 and 24, the resources are one or more physical devices (column 3, lines 14-29).

Claims 7-8 and 25-26, the multiple service levels include varying levels of quality and capacity (column 5, line 40 thru column 6, line 12).

Claims 9 and 27, the multiple service levels are determined by resource sets (column 4, lines 13-49).

Claims 10 and 28, the redistribution is done deterministically (column 4, lines 13-49).

Claims 11 and 29, the redistribution is done statistically (column 1, line 57-67).

Claims 12 and 30, the redistribution are based upon a proportion of supply held by the holding entity using a holding price (column 5, line 40 thru column 6, line 12).

Claims 18 and 36, the physical devices are a plurality of telephones, telephone interface circuits, trunk interface circuits, telephone lines and telephone switches for establishing or maintaining a voice or data communication (column 3, lines 14-27 and column 4, lines 50-67).

Claims 15-17 and 33-35, Delp and Johnson fail to teach that each bidding entity, supply of services and holding entities are represented by agents. Official Notice is taken that representing agents are old and well known in the computer arts. Therefore it would have been obvious to one of ordinary skill in the art to modify the teachings of Delp and Johnson and include agents because they would make it more efficient for the entities by managing their resource expectations.

Claims 13-14 and claims 31-32, Delp teaches redistribution based upon a proportion of supply held by the holding entity using a holding price (column 11, line 47 thru column 12, line 38). Delp fails to teach the manner in which the proportion is calculated. Official Notice is taken that proportion formulas are old and well known in the art. Therefore it would have been obvious to someone of ordinary skill in the art that a formula such as $r_c (1 - P_c / P_b)^{\text{exp}}$ could be applied to determine proportions because it provides a standardized and thus more efficient practice when determining proportions based on price and supply.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (571) 272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted
Stefano Karmis
30 September 2005



HANI M. KAZIMI
PRIMARY EXAMINER